

ALTERNATIVE TO THE PROPOSED ACTION

PART III

FEDERAL ALTERNATIVES TO THE PROPOSED ACTION

All alternatives to the proposed action, approving the New York Coastal Management Program, involve a decision to delay or deny approval. Delay or denial of approval could be based on failure of the New York Coastal Management Program to meet any one of the requirements of the Coastal Zone Management Act. In approving a Coastal Management Program, affirmative findings must be made by the Assistant Administrator for Coastal Zone Management on more than twenty requirements.

Development of the New York Coastal Management Program has involved eight years of work. Alternative approaches including different forms of legislation have been introduced. Of particular concern throughout program development was the method of obtaining consistency of State agency actions with the coastal program. Another major concern has been the adequate protection of beaches and dunes. The first issue is addressed in section 919 of the Waterfront Revitalization and Coastal Resources Act. The second issue was addressed in passage of the Shoreowners Protection Act.

The Assistant Administrator for Coastal Zone Management has made a preliminary determination that New York State has met the requirements for program approval under Section 306 of the Coastal Zone Management Act.

However, in order to elicit public and agency comment and assure that the Assistant Administrator's initial determination is correct, this section identifies issue areas where there may be possible need for revisions and considers the alternatives of delaying or denying approval based upon each issue area.

1. Loss of Federal Funds to Administer the Program

Under Section 306, New York would receive approximately \$3 million to administer its coastal management program; if such funds are made available pursuant to Congressional action. The loss of any available Federal Section 306 funds would result in the inability of the State to provide adequate staffing and administrative support to coordinate and evaluate coastal actions, implement a state coastal program, address priority issues, and assure that government agencies coordinate and operate consistently with coastal policies. State technical assistance to local governments, essential for the development of local waterfront revitalization programs, would also be curtailed due to limited funds. To deny approval of this program would also make it difficult for the State to coordinate and expedite resolution of conflicts, and establish unified state policies for State actions in the coast. Denial of approval would also jeopardize the eligibility of the State to receive Coastal Energy Impact Program (CEIP) funds pursuant to Section 308 of the Coastal Zone Management Act.

Second, pursuant to the DOS regulations, all direct and funding actions, other than permitting actions, undertaken by a State agency that do not have a significant affect on the environment will be reviewed by the State agency for consistency with the coastal policies. At the time that the agency makes a decision on an action, a certification of consistency must be forwarded to the Department of State.

Alternative 2: The Assistant Administrator could delay or deny approval if the policies of the program are not specific enough to meet the requirements of the Federal Coastal Zone Management Act.

CZMA regulations 923.11 (b) (2) and 923.(b) (4) require that coastal policies must provide a clear sense of direction and predictability for decision makers who must take actions pursuant to or consistent with the management program. Specificity is particularly important when such policies will be administered in part by local governments, as will be provided in local waterfront revitalization programs. It is also important to assure that State administered policies are not subject to an excessively broad range of interpretations.

The Assistant Administrator has made the preliminary decision that the new policies and standards contained in the Waterfront Revitalization and Coastal Resources Act and regulations together with those existing policies, standards and regulations incorporated into the program from other State legislation, provide sufficient specificity for program approval. This decision is based in part on the draft guidelines contained in Appendix B, which give local governments much further assistance in preparing more specific policies for their voluntary local waterfront revitalization programs.

Alternative 3: The Assistant Administrator could delay or deny approval if the boundary is not adequate to meet the requirements of Section 304 (1) - definition of the coastal zone and 923.31 (a) of the CZM regulations - inland boundaries.

Section 304 (1) of the Coastal Zone Management Act states that the coastal zone shall extend inland from the shoreland only to the extent necessary to control shoreland uses which have a direct and significant impact on coastal waters. The State has established a boundary that is approximately 1,000 feet inland from the shorelines. However, in urbanized locations it is about 500 feet inland and in a few areas where a major roadway or railroad line runs parallel to the shoreline

STATE ALTERNATIVES TO THE PROPOSED ACTION

Introduction

During development of New York's Coastal Management Program, a number of substantive and organizational alternatives were considered at length. The Legislature, in passing the Waterfront Revitalization and Coastal Resources Act, made a choice about the particular combination of these alternatives which were to operate in the State. Thus, the number of alternatives left to be examined in this environmental impact statement has been greatly reduced. Before discussion of the current alternatives, a history of the major alternatives considered during program development is presented below.

A. History of Major Alternatives

The discussion of options focused on various possibilities for legal program authority. A coastal management program could have been based on State legal authorities at either the State level or delegated to the local level, or a combination of both. In New York, State agencies have strong management authorities for matters of statewide or regional concern, while local governments have strong powers to manage issues of local concern. On a number of matters, a close inter-relationship exists between the exercise of authority at State and local levels. State and local authority alternatives were considered separately as follows.

1. State Authority Alternatives

a. Status Quo

The status quo alternative would continue all existing State programs with no new additions. A specific coastal management program would not be established. This alternative would rely on the State policy, as expressed in Article XIV, Section 4 of the Constitution, to conserve and protect the State's natural resources and scenic beauty and encourage the development and improvement of its agricultural lands. The Legislature, in implementing this policy, has enacted numerous programs that already provide for management of most resources of statewide or regional concern in the coastal area. Important programs administered by the Department

This alternative would ensure the coordinated management of coastal resources in matters of statewide or regional concern, but would leave gaps in existing authorities (in particular, management of erosion hazard areas) and would fail to qualify the State for Federal approval of a coastal management program.

- c. Coordinate existing State program authorities plus additional program authorities to fill gaps (essentially the alternative chosen)

This alternative would be the same as the coordination alternative but would add several specific new program authorities to fill identified gaps in existing programs. These additions would include authority to regulate development in erosion hazard areas and provide for designation of water-dependent uses.

This alternative would qualify New York State for Federal coastal management program approval.

- d. Comprehensive coastal management program authority

This alternative would also keep all existing State program authorities, but would add new legislative authority to institute a comprehensive State coastal management program for directly controlling development throughout the coastal area. A variety of sub-options exist for this alternative in terms of the extent to which development would be controlled. These options range from a program that would directly control all development anywhere in the coastal area to one that would directly control only a few key types of development with a specified minimum size in specific designated locations. This alternative would establish priorities for permissible uses in specific locations within the coastal boundary, both in terms of areas appropriate for development and areas where development would be inappropriate.

The status quo alternative would be consistent with New York State's "home rule" tradition and would be responsive to many local attitudes about desirable levels of local involvement in land use regulations. However, because the use of local authority is optional, local land use control programs in coastal areas range from very strong to non-existent. Furthermore, not all local land use programs in coastal areas fully consider the environmental and economic importance of coastal resources. Thus, significant gaps in the management of coastal resources by local governments would remain, as would the problems and cumulative impacts of independent local decisions.

Although the State's Coastal Management Program could provide the basic level of management required for Federal program approval, the status quo local alternative would result in inconsistencies between State and local policies, where these exist, leading to conflicts in the protection and management of coastal resources and to possible losses of those resources not explicitly protected by State programs. Also, although the State would maintain its jurisdiction over the siting of facilities which serve a region, opposition of local governments could limit the ability of the State to promote actions such as economic development in desirable locations.

b. Voluntary local coastal management programs complying with State Coastal Management Program (essentially the alternative chosen)

Under this alternative, specific provisions would be made in new State legislation for local governments to adopt local coastal management programs that would comply with the State's Coastal Management Program. This alternative would differ from the status quo alternative in that approvable local programs would be required to meet State's established criteria. Participating local governments would be eligible for financial and technical assistance in preparing local management

voluntary local program alternatives. Depending on the specific State requirements for local coastal management programs, this alternative could help to assure statewide coverage and consistency with the Coastal Management Program, increase enforceability of coastal policies as a result of the universality of local management programs, and result in better management and protection of coastal resources by including decisions of sub-regional significance in the overall Coastal Management Program. It would, however, affect local autonomy by requiring that local governments use their present authority to develop and implement coastal management programs, in accord with State guidelines. This could be seen either as a loss of local "home rule" power or as a strengthening of these prerogatives through the partnership of local governments with other levels of government.

d. Preemption of local government coastal management authority

Under this alternative, any local controls in the coastal area which are not consistent with a comprehensive State coastal management program would be superceded by legislation declaring the management of coastal resources to be a matter of State concern. In effect, such controls as zoning would be exercised by the State coastal management agency for areas within the management boundary.

This alternative would prevent problems of inconsistency between local actions and the State management program and would ensure a uniform management program throughout the coastal area. Coastal resources would be better managed and the development process in coastal areas would be more predictable. However, the alternative would significantly limit local "home rule" powers in coastal areas and would move many land-use and resource decisions from the local to State level.

Funding

The State could decide not to seek approval of a coastal management program under the Federal Coastal Zone Management Act, but there are significant advantages to a Federally approved program, including financial assistance. Section 306 of the Act authorizes such funding, but other sections of the law authorize financial assistance for specific aspects of coastal management, such as coastal energy impacts. There are a number of major categories to which such funding, if appropriated by the Congress, could be allocated, including the following:

Administration of the Coastal Management Program. This would include such administrative functions as applying for, accepting and distributing assistance, as well as monitoring and evaluating performance and compliance with the program by other agencies. Administration funds would be used by the "306" Agency.

Improving management of existing State programs incorporated in the Coastal Management Program. This could include providing additional regulatory staff for specific programs that are key to the coastal management effort, such as erosion hazard areas, in order to provide improved protection and management and speed the processing of permit applications.

Preparing and adopting local coastal management programs. Funding could be provided directly to local governments to prepare and adopt local programs for managing coastal resources. In addition, funding could be used to support technical assistance to local governments by the "306" Agency or other State agencies.

B. Current Alternatives

1. Alternative Choices Concerning State Participation in Federal Coastal Management Program

a. Participate in the Federal Coastal Management Program - Proposed Action

Since states participate voluntarily in the Federal Coastal Management Program, New York State could determine that it is necessary and desirable for the implementation of its State-mandated coastal program to participate and seek Federal approval of the State program.

With an approved program, and subject to Congressional appropriations, New York would be eligible to receive Federal Coastal Management Program ("306") and Coastal Energy Impact Program (CEIP) funds which could in turn be used to leverage additional assistance from other sources. The "306" and CEIP funds would help to support State administration of its coastal program and could be vital to effective implementation of waterfront revitalization and resource protection aspects of the State program. Moreover, financial assistance could be particularly important as an incentive to local governments in need of aid not otherwise available for project planning to revitalize deteriorated and under-utilized coastal areas.

In addition, by participating in the Federal program, New York would benefit from the consistency requirements of the Federal Coastal Zone Management Act. These requirements would create a continuing dialogue between the State and Federal agencies engaged in activities in New York's coastal area. Thus, Federal agencies would be better informed about the State's coastal concerns and would be able to make decisions more sensitively and more efficiently. Also, those potentially affected by Federal actions would be better able to predict the outcome of the decision-making process.

reasonable, if Federal program regulations were to hinder the State from taking immediate and necessary steps to implement the Act and if "306" funds were suddenly reduced or terminated. Further, this alternative could allow the State to avoid conflicts with the Federal government over respective priorities for managing New York's coastal resources, and would prevent further intervention of the Federal government in the management of its coast. (See also discussion of disadvantages under Proposed Action alternative.)

On the other hand, the "no participation" alternatives would have disadvantages. A decision not to participate could, regardless of current efforts at the national level to reduce domestic program expenditures, result in the loss of funds which could be vital to the implementation of State and local aspects of New York's coastal program. Further, Federal consistency provisions would not be applicable to New York, and the State could not expect Federal agencies to abide by its coastal policies when undertaking actions within New York's coastal area.

Finally, New York and the Federal government have both expended considerable efforts toward instituting a Coastal Management Program in the State. A decision not to participate in the Federal program would not only reduce the State's effectiveness in implementing its program, but would also significantly limit the Federal government's ability to achieve national coastal management objectives since New York has one of the most extensive, varied and valuable coastlines in the Nation.

- b. Implement State consistency requirements of the Waterfront Revitalization and Coastal Resources Act by formal agreements (memoranda of understanding) between the Department of State and other State agencies

This alternative would satisfy the intent of the Act, but the Department of State would have to consult with more than fifty State agencies in developing these agreements. This effort would be time-consuming and costly. In addition, certain small but significant programs might be overlooked with so many programs being considered. Also, the different regulatory procedures of each agency would make this alternative very complex, and there would be no mechanism for efficient monitoring of agency decisions. Thus, the Department of State could not assess the effectiveness of coastal policies in order to improve their implementation. Still, formal agreements with other State agencies would provide assurances that their decision-making procedures had at least incorporated coastal policies so that all agencies regarded coastal revitalization and protection goals similarly.

- c. Implement State consistency requirements of the Waterfront Revitalization and Coastal Resources Act by informal agreements between the Department of State and other State agencies

This alternative might satisfy the letter of the law; however, it would probably not satisfy its intent to coordinate State agencies actions and programs so as to ensure consistency with coastal policies. Again, the Department of State would have to consult with numerous agencies; the results would be the same as under the "formal agreement" alternative. In addition, informal agreements with other State agencies would provide no real assurances that their interpretations of coastal policies were acceptable or that various decision-making procedures had in fact incorporated coastal policies. As a consequence, implementation of coastal policies would be complex and

Section 34-0108 directs the Commissioner of Environmental Conservation to promulgate rules and regulations which will implement the provisions of Article 34. These regulations must contain the following:

standards and criteria to regulate certain activities and development in erosion hazard areas;

standards and criteria governing the location and construction of erosion protection structures;

a procedure pursuant to which any owner of land in an identified erosion hazard area may appeal such designation; and

a procedure by which the strict application of standards and criteria may be varied where practical difficulty or unnecessary hardship can be demonstrated.

6NYCRR Part 505 are the regulations which the Department of Environmental Conservation has developed to meet the statutory mandates of Article 34. These regulations are contained in Appendix A of this document.

b. Do not promulgate regulations to implement Article 34 - No Action Alternative

The no action alternative would ignore the legislative mandate of Article 34 and result in continuance of the status quo regarding the regulation of land use and development in coastal erosion hazard areas. Since many local governments in the coastal areas of New York State do not have adequate, if any, local laws or other management programs to address erosion problems, unwise development and inappropriate activities would continue. This would result in continued unnecessary environmental damage and economic and social costs to not only coastal residents, but to the general population as well. Unwise development in coastal hazard areas ultimately places a financial burden on

However, such a course of action would necessitate ignoring a clear legislative mandate. Furthermore, an education/information program probably would not be effective because most coastal land-owners are not interested in erosion issues until they are directly affected. Coastal erosion management is most beneficial and cost effective, if it can be implemented before erosion or high water problems exist. Furthermore, by eliminating the regulatory, i.e. permit, aspects of an erosion management program, State and local governments lose the potential for such programs to be financially self-sufficient through collection of permit fees.